IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6157 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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HUSSEINBHAI MOHAMMEDBHAI SORATHIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6157 of 2002

MS JALPA J PATEL for Petitioner No. 1

MR HH PATEL, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/08/2002

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner has challenged the

legality and validity of the order of detention dated 10.6.2002 passed against him by the District Magistrate, Bhavnagar, in exercise of the powers conferred on him by Section 3(2) of The Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the "PBM Act"). Ms.Davawala, ld. Standing Counsel for the Union of India has tendered affidavit which is taken on record. Ld. AGP Mr. Patel has also tendered two affidavits viz; one filed by the detaining authority, and another one by the State Government, which are also taken on record.

2. The impugned order of detention passed on 10.6.2002, was executed on 11.6.2002 and grounds for detention were supplied to the detenu. It is the say that the sponsoring machinery had formulated grounds for detention and same were placed before the detaining authority. The detaining authority on the material placed, recorded its subjective satisfaction to the effect that the petitioner is involved in violating the provisions of Control Order Kerosene (Restriction on use and Fixing Ceiling Price) Order, 1993 (hereinafter referred to as the Order of 1993) as well as the provisions of Gujarat Essential Articles (Licensing, Control & Stock Declaration) Order, 1981 (hereinafter referred to as the Order of 1981). It is alleged that the blue kerosene required tobe distributed from Fair Price Shop was not adequately supplied/ distributed to the card-holders and was siphoned for getting more price than the price fixed by the Order of 1993. Detaining authority has recorded that the petitioner is likely to indulge in same activities and it would disrupt the system of distribution of blue kerosene from the Fair Price Shop.

3. The petitioner has challenged the legality and validity of the order of detention passed against him on number of grounds. However, ld. counsel Ms.Jalpa J. Patel appearing for the petitioners has concentrated and restricted her arguments mainly on the ground of parity. She has submitted that the present petitioner should also be set at liberty forthwith on the ground of parity as the co-detenu has been released by this Court by holding order of detention dated 21.5.2002 bad-in-law while dealing with Spl.Civil Application No. 5363/2002, vide oral judgment dated 25.7.2002. She has further submitted that the present petitioner is not even a Licence-holder, but he being a friend and neighbour of the detenu Shri Chetanbhai Sheth who filed Spl.C.A.No.5363/2002 referred to above and who has been released by this Court, the impugned order of detention also came to be passed

against the present petition on the allegation that one barrel of kerosene was found from the compound of the present petitioner. She, therefore, submitted that on account of such solitary incident, detention order could not have been passed. She has further raised a point that detaining authority has served the grounds of detention and he has been supplied copy of the the Order of 1993 and copy of the Order of 1981. However, the grievance of the petitioner is that there is no proximity between the alleged wrong and the order of detention and that order of detention has been passed at a delayed and belated stage. Thus, this is the clear case of after-thought. The petitioner was not either dealing in the distribution of the kerosene nor was a licence holder. So, the subjective satisfaction recorded by the detaining authority that the petitioner is indulging in the activities which may result into disruption of the distribution of essential articles or any such essential commodity, is not based on the actual facts available on record. She has next submitted that the detaining authority ought to have passed order of detention promptly and delay in passing the order of detention should be treated as fatal as this delay has not been explained by the detaining authority.

4. On perusal of the bunch of papers supplied to the detenu, it clearly transpires that there is much force in the arguments advanced by the learned counsel appearing for the petitioner. So far as first point advanced regarding parity is concerned, from the papers available on record, it clearly transpires that the petitioner is the co-detenu and is not even licence-holder and only on the solitary incident of finding one barrel of kerosene from the compound of the present petitioner, order of detention is passed. This Court, while releasing co-detenu Mr. Chetanbhai G.Sheth, while dealing with Spl.C.A. No. 5363 of 2002, has assigned elaborate reasons for holding order of detention bad and, therefore, on the ground of parity also, the present petitioner also requires to be released by holding impugned order of detention passed against him as bad in law.

5. From perusal of bunch of papers, it also transpires that there is no proximity between the alleged wrong and order of detention. It seems that some confusion as to whether powers conferred under Sec.3(2) of the PBM Act should be exercised in the case of the present petitioner was under scrutiny and, therefore, delayed order of detention has been passed. Unexplained and unreasonable delay caused in passing the order of

detention, therefore, would vitiate the subjective satisfaction recorded by the authority concerned and therefore, order of detention suffers from this very important infirmity.

6. Thus, on both this count, the petition requires to be allowed and, therefore, it is not necessary to deal with and go into the merits of all other points raised in the petition challenging the order of detention.

7. For the reasons recorded in the oral judgment, petition is hereby allowed. Impugned order of detention dated 10.6.2002 passed by the District Magistrate, Bhavnagar, against the detenu is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if they are not required to be detained in any other case. Rule is made absolute. Direct service is permitted.

01.08.2002 [C.K. BUCH, J]
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